

In the United States Court of Federal Claims

No. 93-655C

Filed: August 5, 2025

ANAHEIM GARDENS, et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

The Parties misapprehend the Court's recent request for input, apparently assuming the Court was once again raising the possibility of appointing a testifying expert witness pursuant to FRE 706. (See Joint Status Report, ECF No. 852). Not so. As the Court explained, that option was previously opposed by both parties. (Summary Judgment Motions Hearing Transcript ("Hr'g Tr.") at 104:16–20, ECF No. 851). Accordingly, that ship has sailed. In anticipation of the commencement of a trial for all remaining claims, the Court is now considering appointment of a non-testifying technical advisor. (Hr'g Tr. at 112:14–114:7); *Reilly v. United States*, 863 F.2d 149, 157–60 (1st Cir. 1988). Technical advisors and FRE 706 experts are distinct; the appointment of a technical advisor for the benefit of the Court dealing with complex issues is within the inherent powers of the Court, and outside the procedure of FRE 706. See generally *TechSearch, L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1379 (Fed. Cir. 2002) (describing guidelines for limiting the role of the technical advisor). Accordingly, the parties are **DIRECTED** to provide a supplemental Joint Status Report by **Tuesday, August 12, 2025**, squarely addressing this possibility.

IT IS SO ORDERED.

s/ David A. Tapp
DAVID A. TAPP, Judge